Is "INTERNATIONAL LAW" LAW? — Austin's definition of law, as a command imposed by a sovereign and enforced by a physical sanction, sharply conflicts with common usage of the term "international law," and has evoked frequent criticism from writers in that branch of jurisprudence. Judged by Austin's standard, the rules of international law are no more than principles of positive morality. That they do not possess all the characteristics common to the laws of an organized political community, which Austin had in mind in framing his definition, is generally admitted. The dispute is as to whether the lack of certain of such requirements, notably that of enforceability, excludes them from the technical conception of law. A very readable discussion of the general problems is contained in a recent article in the Columbia Law Review. *The Legal Nature of International Law*, by George B. Scott, 5 Columbia L. Rev. 124 (Feb. 1905).

The writer maintains two propositions: first, that the quality of enforceability and the existence of a sanction are not essential to the definition of law; secondly, that assuming a sanction to be requisite, one is present in the realm of international law. Where a dispute between the citizens of two different nations results in litigation in the courts of one of them, it has been the practice of common law courts for two centuries, as the writer points out, to adopt and enforce the principles of private international law. Here a sanction, in the strict sense of the analytical jurist, secures the enforcement of the rules of international law, and the terms of Austin's definition are exactly complied with. The real difficulty, however, arises in considering the rules governing disputes the parties to which are not citizens but nations. Obedience to these rules, the writer contends, is compelled by a twofold sanction, international public opinion and war.

The writer's contention that a sanction is not essential to the conception of law is in accord with the well-known doctrines of the historical school of jurisprudence. But the suggestion contained in his second proposition that a sanction may be found in the forces of public opinion and war seems open to serious objection. The sense in which he uses the word "sanction" in this connection is totally at variance with its technical legal signification. The sanction of public opinion, if such there be, attaches equally to principles of purely moral obligation; to identify such a sanction with the sanction of law is to sacrifice the distinction between positive law and ideal morality. War as a sanction is analogous to the act of an individual in a community in enforcing his rights by brute force. The determination of right becomes a balance of national strength. Professor Scott's proposition leads to the remarkable result that until the group of nations unite in recognizing a duty of obedience to some determinate authority, the efficiency of the sanction is directly proportionate to the probability of wars and the weakness of culprit nations. Clearness in the conception of law is perhaps best secured by insisting upon the necessity of a sanction in Austin's sense, or by rejecting the notion of a sanction altogether as a non-essential attribute.

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